



DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF SUPERFUND - DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM
4th FLOOR L & C ANNEX, 401 CHURCH STREET
NASHVILLE, TENNESSEE 37243-1538

MEMORANDUM

TO: Tennessee Drycleaning Facilities, Drycleaning Solvent Suppliers
Current or Prior Owners/Operators of Abandoned Drycleaning Facilities
Potential Impacted Third Parties

FROM: The Tennessee Drycleaner Environmental Response Program

DATE: September 15, 2003

2004 ANNUAL REGISTRATION NOTICE

Review the guidance document and follow the instructions. **Facilities that submit incomplete registration forms will not receive a Certificate of Registration until the registration form is completed.** Beginning with the calendar year 2004, the annual registration fee is based on the reported amount of solvent purchased. The enclosed invoice/bill is based on a law passed by the General Assembly and rules adopted by the Drycleaner Environmental Response Board, anticipated to become effective on October 14, 2003. The registration package includes the following:

1. A guidance document entitled "Guidance For Registering With The Tennessee Drycleaner Environmental Response Program"
2. Registration form and instructions
3. Annual Registration Fee Invoice (Solvent purchased or obtained from July 1, 2002 – June 30, 2003)
4. Penalty Policy
5. Quarterly Solvent Report (the quarterly reports may be faxed to DCERP at 615-741-1115).

Return the following in the enclosed return address envelope on or before October 31, 2003:

- Registration form (DCERP recommends that you photocopy and retain a copy of the registration form)
- Invoice (cut and return the bottom portion) If you dispute the reported amount of solvent purchased, submit a statement along with any supporting documentation or verifiable proof. In order for the disputed assessment to be considered, you must submit the assessed fee. If our assessment exceeds the actual amount we will process a refund.
- Quarterly Solvent Report (July-September 2003)
- Copy of the CED certificate(s)
- Annual Registration fee

DUE DATE/LATE FEES-The registration forms and appropriate fees are due no later than October 31, 2003. Failure to register and pay the appropriate fees will subject you to penalties of up to \$50 per day (see the attached penalty policy). The postmark date is considered the date of receipt. Therefore, a registration renewal postmarked November 1, 2003 is considered late and is subject to the \$50 per day late payment penalty. It is the facilities' responsibility to ensure that registration renewals are postmarked on or before October 31, 2003. A recent amendment to the Drycleaner's Environmental Response Act requires that all fees, penalties and surcharges must be paid in full before a Certificate of Registration can be issued. This includes any unpaid fees, penalties or surcharges from prior years.

Important Notice for drycleaning facilities which ceased operations during 2003. A facility which registered as an active facility, but then ceases on-site drycleaning operations during the calendar year, will be considered an active facility until the end of the calendar year. At the beginning of the next calendar year, the facility will be considered an abandoned facility. Program deductibles for environmental response activities in DCERP are based on the facility's status when the Application For Entry Into DCERP (application) is submitted. Therefore, sites that have already ceased or will cease on-site drycleaning operations during 2003 and make application to DCERP prior to the end of the year will receive the benefit of a significantly reduced deductible.

EXAMPLE: XYZ Cleaners with 3 full-time equivalent (FTE) employees ceases drycleaning operations on November 15, 2003.

Situation 1: On February 12, 2004, XYZ Cleaners submits an Application For Entry Into DCERP. XYZ is considered an abandoned facility in 2004 therefore the DCERP deductible is 25% of each reimbursement request up to a maximum of \$25,000.

Situation 2: On December 23, 2003, XYZ Cleaners submits an Application For Entry Into DCERP. XYZ is considered an active facility through December 31, 2003 therefore the DCERP deductible (for an active facility with 0 to 4 FTEs) is 5% of each reimbursement request up to a maximum of \$5,000.

The program deductible will remain in effect throughout all phases of work in the program unless the facility's classification was misrepresented (i.e. under reporting FTEs, etc.). The annual registration fee may change from year to year based on the status of the facility (active or abandoned). In both situations above, the 2004 annual registration fee would be \$1500 (the abandoned facility registration fee).

GUIDANCE FOR REGISTERING WITH THE
TENNESSEE DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM

The **purpose of the Tennessee Drycleaner Environmental Response Program (DCERP)** is to establish a "Fund" for the investigation and cleanup of sites where drycleaning solvents have been released to the soil, surface water or underground water. The fund was established and is maintained from registration fees collected from program participants and surcharges on drycleaning solvent. The following questions and answers are provided by the Department of Environment and Conservation in an attempt to provide guidance for those registering with DCERP.

Who must register? The owner or operator of a drycleaning facility that is currently conducting, or intends to conduct, drycleaning operations for all or part of the year and each in-state wholesale distribution facility must register with the Department. A **"drycleaning facility"** means any commercial facility located in this state which is engaged in on-site drycleaning operations (i.e., cleaning of apparel and household fabrics, using one or more drycleaning solvents), other than a coin-operated drycleaning operation, a facility located on a US Military Base or owned by the United States, a commercial uniform service and/or linen supply facility, or a facility owned by the State or any agency or department thereof.

An **"in-state wholesale distribution facility"** means a place of business located in Tennessee of a wholesale distributor or any real property premises or individual leasehold space located in Tennessee occupied by an in-state wholesale distribution facility after June 13, 1995. A **"wholesale distributor"** means a person or company whose primary business is selling drycleaning solvents and supplies to in-state or out-of-state drycleaning facilities. Primary business shall mean where the percentage of said person's or company's gross receipts from the sale of drycleaning solvents and supplies to such drycleaning facilities equals or exceeds twenty percent (20%) of total gross receipts."

Gross Receipts The gross receipts period shall be over the last twelve (12) month period or over such time as the facility has been in operation, whichever is less. The gross receipts of a new or start-up facility will be considered the sale of drycleaning solvents and supplies if it would reasonably be expected from inventory, advertising, history of this and/or similar businesses, business plans of the owner or operator, reasonable business expectations of the owner or operator and/or business community, and from all other relevant factors that the primary business of the facility will be the sale of drycleaning solvents and supplies as defined herein. In addition, any person or company may make a showing to the Department by any reasonable and timely method that its primary business is the selling of drycleaning solvents and supplies to drycleaning facilities.

If a person or company does not qualify as a wholesale distributor in regard to a particular facility, or if the facility in question does not qualify as a drycleaning facility or abandoned drycleaning facility under the Act, then that facility would be ineligible to petition for entry into the program and would have no access to program funds for reimbursement of investigatory and cleanup expenses. *However, it may be necessary to complete a registration form (without paying a registration fee) for informational and/or solvent surcharge fee purposes. Refer to the "who collects the solvent surcharge fee" section for more information.*

In addition, current or prior owners or operators of abandoned drycleaning facilities may register sites. An **"abandoned drycleaning facility"** means any real property or premises or individual leasehold space on which a drycleaning facility formerly operated. Abandoned facilities can register after the initial registration deadline; however, all past registration fees, plus interest, plus a \$50 per month late fee would be due.

Impacted third parties are not required to annually register with the Department. However, in order to have access to the Fund and receive reimbursement (for response costs above the applicable deductibles) all applicable fees for a site must be paid. Therefore, an impacted third party may have to pay all or a portion of the applicable fees for a site not previously paid by another party. An **"impacted third party"** means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

When to register? Registration of drycleaning facilities, abandoned drycleaning facilities and in-state wholesale distribution facilities is **required annually**. Registration forms along with the appropriate fees are **due by October 31st** each year. The registration fees for the 2004 calendar year (January 1, 2004 through December 31, 2004) are due by October 31, 2003. Any person who fails to pay a lawfully levied registration fee or any part of the registration fee by the due date will be subject to a penalty assessment of up to \$50 per day until the registration fee is paid. Certificates of registration will be mailed to the owner/manager of the facility at the address identified in section 2 of the registration form.

Certificate of Registration required. TCA Section 68-217-106(d) states "after May 15, 1996, it will be **unlawful to sell or transfer drycleaning solvent** to any person owning or operating a drycleaning facility **unless** the owner or operator of the drycleaning facility **has conspicuously posted a copy of a valid certificate evidencing registration**. Any person who violates or fails to comply with this provision is subject to civil penalties of up to ten thousand dollars (\$10,000) per violation." The Certificate of Registration is valid only for the specific address identified on the certificate and is therefore not transferable to another location. **If you move to another location that is not currently registered, you must complete a new registration form and pay another registration fee.** Therefore, unless the switch in locations occurs at the end of the calendar year, you will be responsible for paying two registration fees during one year. Significant late registration penalties will be assessed for failing to timely register a new location. **If the new location has never been registered with DCERP,**

prior to being issued a Certificate of Registration, the facility must meet all Class 1 and Class 2 Best Management Practices including containment and being staffed by a Certified Environmental Drycleaner. The department may conduct a facility inspection to determine compliance with BMPs. DCERP, along with the Board, has developed a policy addressing the granting of extensions or exemptions from compliance with the CED requirement. Upon request, DCERP can grant an extension (issue a Certificate of Registration) to allow a facility the opportunity to be staffed by a CED. The extension will expire 45 days after the next available CED examination. The facility will then become an unregistered facility and cannot legally obtain solvent unless an appeal is requested or the Board grants an additional extension or exemption. Please refer to the Extension/Exemptions for Implementing Best Management Practices Policy.

What is the solvent surcharge fee? The Act establishes a drycleaning solvent surcharge of **ten dollars** (\$10) for each gallon of dense non-aqueous solvent or product (chlorinated solvents like perchloroethylene) purchased by a drycleaning facility and **one dollar** (\$1) for each gallon of light non-aqueous solvent or product (Stoddard, etc.) purchased by a drycleaning facility.

Who collects the solvent surcharge fee? Who must report the quantity of solvent sold/purchased?

The solvent supplier collects the surcharge fees and both the supplier and each drycleaning facility are responsible for submitting quarterly solvent reports to DCERP. TCA 68-217-106(h) states “The solvent surcharge required by subsection (g) of this section shall be collected and forwarded to the Department by the seller of the drycleaning solvent, regardless of the location of such seller.” In addition Rule 1200-1-17-.03(6)(b) states “The supplier’s quarterly solvent sales report and fees along with solvent reports submitted by each active drycleaning facility, will be due by the end of the month following the reporting quarter. The due dates are as follows:

| <u>Reporting Period</u> | <u>Report/Surcharge Due Date</u> |
|-------------------------|----------------------------------|
| January-March | April 30th |
| April-June | July 31st |
| July-September | October 31st |
| October-December | January 31st |

TCA 68-217-108(a) states “ Upon failure or refusal of a seller of drycleaning solvent, an owner or operator of a drycleaning facility, an in-state wholesale distribution facility, or the current or prior owner or operator of an abandoned drycleaning facility, subject to payment by regulation, to pay a registration fee or solvent surcharge, lawfully levied within a reasonable time allowed by the commissioner, the commissioner may proceed in the court of competent jurisdiction to obtain judgment and seek execution of such judgment.” In addition, TCA 68-217-108(b) states “Any person who fails or refuses to pay a lawfully levied registration fee or solvent surcharge or any part of that registration fee or solvent surcharge by its due date shall be assessed a penalty of up to fifty (\$50.00) for each day that passes after the fee or surcharge is due and before said fee or surcharge is paid.”

Safeguarding of surcharges held for the Department. The integrity of the Drycleaner Environmental Response Fund is crucial to the viability and success of this program. The reliance on numerous persons and companies to collect and remit the surcharges that will constitute the fund places added emphasis on proper procedures and communication in respect to the handling of these surcharges. The following language reflects the Department's interpretation of some of the responsibilities that *drycleaning* facilities and solvent suppliers have in collecting, safeguarding, and finally paying collected surcharges to the Department:

Rule 1200-1-17-.03(6)(e) states “Every person or entity responsible for collecting or holding surcharges under the Act has the obligation to hold said amounts in trust for the Fund until said surcharges are paid to the Fund according to the Act and the regulations promulgated thereunder. Said person shall defend and protect, at his own expense, said surcharges from all losses and expenses of whatever nature, including but not limited to those occasioned by suits, levies, garnishments, and all other actions, losses, and expenses of whatever description, including all banking fees and charges or similar expenses. Said person shall promptly notify the Department of any action or circumstance which causes or threatens the collected surcharges with any loss or diminishment, including the person’s insolvency or filing for protection under Federal bankruptcy law. All surcharges are the property of the Fund, and the person has no equitable right or claim to said surcharges. Any use of the surcharges or failure to defend said surcharges from loss or diminishment shall be deemed a violation of the trust relationship and these rules. Said person shall be liable to the Fund for all losses or diminishment of surcharges, including failure to collect. Surcharges should be deposited in a separate account used only for the purposes of this trust, or in the alternative, said surcharges should be clearly identified as trust property in the records and accounts of the person collecting the surcharge.

Drycleaner Environmental Response Fund. An owner or operator of a drycleaning facility or in-state wholesale distribution facility, the current or prior owner or operator of an abandoned drycleaning facility or an impacted third party may seek reimbursement from the fund for response costs, above the applicable deductible, incurred in connection with a compensable release.

Entry into the program will be subject to board approval and prioritization. In order for the costs of any investigative or cleanup response to be eligible for reimbursement, the response must have been undertaken and approved pursuant to regulations of the Drycleaner Environmental Response Program. The petitioner will be responsible for meeting a deductible associated with each request for reimbursement. Except under certain circumstances, reimbursement from the fund is limited to two hundred thousand dollars (\$200,000) per year for releases from any individual drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility.